

Texas Coastal Management Program
Final Environmental Impact Statement (FEIS)
August 1996

TITLE PAGE

United States Department of Commerce
Combined Coastal Management Program and
Final Environmental Impact Statement for
the State of Texas
August 1996

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The preparation of this publication was financed by the Office of Ocean and Coastal Resource Management, NOAA.

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Abstract

DESIGNATION: Final Environmental Impact Statement

TITLE: Proposed Federal Approval of the Texas Coastal Management Program

ABSTRACT:

The State of Texas has submitted its Coastal Management Program to the Office of Ocean and Coastal Resource Management for approval pursuant to Section 306 of the Federal Coastal Zone Management Act of 1972 as amended (CZMA), 16 U.S.C. 1451 et seq. Approval would allow program administrative grants to be awarded to the State and would require that Federal actions be consistent with the program. This document includes a copy of the program, which is a comprehensive management program for coastal land and water use activities. It consists of numerous policies on diverse management issues which are administered under Texas laws and is the culmination of several years of program development. The Texas Coastal Management Program either promotes the beneficial use of coastal resources, prevents their impairment, or manages major activities that substantially affect numerous resources. The program will enhance decision-making processes used for determining the appropriateness of actions in the coastal area.

Approval and implementation of the program will enhance governance of Texas's coastal land and water uses according to the coastal policies and standards contained in Texas's statutes, authorities and rules. Federal alternatives to program approval include delaying or denying approval, if certain requirements of the Coastal Zone Management Act have not been met. The State could modify parts of the program or withdraw its application for Federal approval if either of the above Federal alternatives results from circulation of this document.

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COMMENTS: Comments on the Final Environmental Impact Statement are due to NOAA 30 days after date published.

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Note to Readers

The National Environmental Policy Act (NEPA) of 1969 requires that an environmental impact statement be prepared as part of the review and approval process by Federal government agencies of major actions which significantly affect the quality of the human environment. The Federal action contemplated is approval of the Texas Coastal Management Program under Section 306 of the Federal Coastal Zone Management Act of 1972, as amended (CZMA). It is the general policy of the Federal Office of Ocean and Coastal Resource Management (OCRM) to issue combined environmental impact statements and program documents.

Part I of this Final Environmental Impact Statement (FEIS) was prepared jointly by the the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management (NOAA) and the State of Texas and provides summary information concerning the Texas Coastal Management Program (TCMP), including how the program addresses the requirements of the CZMA. Part II of the FEIS is a description of the TCMP and was prepared by the State. It has been reviewed by NOAA and is relied upon as a description of the proposed action for purposes of NEPA. Part III fulfills the remaining NEPA requirements for an FEIS and was prepared by NOAA with assistance from the State of Texas. Part VII contains public comments on the DEIS and NOAA's response to those comments.

An immediate effect of federal approval of the Texas program is the qualification of the State to receive Federal matching funds for use in administering the program. The CZMA also requires Federal agencies to undertake activities consistent to the maximum extent practicable with federally approved state coastal management programs. In addition, upon program approval, entities within the State of Texas will be eligible to apply for deepwater port licenses from the U.S. Coast Guard, pursuant to the Deepwater Port Act of 1974 (33 U.S.C.A. §1503).

For purposes of reviewing this proposed action, the key questions are:

- whether the Texas program is consistent with the objectives and policies of the national legislation;
- whether the award of Federal funds under Section 306 of the Federal Act will help Texas to meet those objectives;
- whether Texas management policies, authorities, and organizational structure are adequate to implement the program; and
- whether there will be a net environmental gain as a result of program approval and implementation.

NOAA has made a preliminary determination that the answers to these questions are affirmative. NOAA wants the widest possible circulation of this document to all interested agencies and parties in order to receive the fullest expression of opinion on these questions. NOAA thanks those participating in the review of the TCMP and this FEIS.

Texas Coastal Management Program
Final Environmental Impact Statement (FEIS)
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PART I: OVERVIEW

A. Summary of the Texas Coastal Management Program

While significant population growth and economic development along the Texas Coast have brought economic opportunity to the coast, they have also resulted in the loss or degradation of dune complexes, coastal wetlands and other critical aquatic sites; changes to bay and estuarine water quality; and added demands and limitations on coastal access. Also, increased coastal development has meant that greater numbers of persons and structures are vulnerable to coastal erosion, whether natural or human induced, and subject to coastal flooding, storm surge, and wind damage. The success of Texas' ports has resulted in the need for increased dredging and attendant dredged material disposal. Set against this background, Texas' fragmented government structure was not addressing these priority issues in a comprehensive, coordinated, and efficient manner. Consequently, it was within this context that the State developed its Coastal Management Program.

The Texas Coastal Management Program (TCMP) is based primarily on the Coastal Coordination Act of 1991 (33 TEX. NAT. RES. CODE ANN. §201 et. seq.) as amended by HB 3226 (1995), which calls for the development of a comprehensive coastal program based on existing statutes and regulations. Key elements of the Coastal Coordination Act and its implementation regulations (31 TAC §§501, 503, 505, and 506) include:

establishment of the Coastal Coordination Council (Council) to develop policy and oversee implementation of the TCMP;

development of a uniform set of coastal goals and policies;

establishment of the fundamental legal requirements that selected "networked" state agencies and local governments must comply with, and enforcement of the uniform policies when the networked agencies take an action or develop rules that may adversely affect a coastal natural resource area;

establishment of the scope and organizational framework of the program; and the program boundaries, designation of the Areas of Particular Concern (coastal natural resource areas) and the activities subject to the program through designation of specific networked agencies and local governments and authorities that are subject to, and will implement, the coastal policies;

establishment of procedures to ensure networked state agency and local government implementation and adherence to the uniform policies, including rule certification and state consistency review (Council review);

establishment of procedures to ensure that Federal activities will comply with the state's coastal policies;

establishment of mechanisms such as the Council to ensure implementation of, and adherence to, the coastal policies; and

establishment of the procedures for enforcement of the TCMP by the networked agencies and the Council and Attorney General's Office.

1. Scope of the Program

The Coastal Coordination Act establishes the geographic scope of the program by identifying the program's inland, interstate and seaward boundaries (described in Part II Chapter Two and Appendix F). The program's seaward boundary is the State's territorial seaward limit (10.3 miles). The State's inland boundary is based on the State's Coastal Facilities Designation Line (CFDL). The CFDL was developed in response to the Oil Spill Act of 1990 and basically delineates those areas in which oil spills would affect coastal waters or resources. For the purposes of the TCMP, the CFDL has been modified somewhat to capture wetlands in upper reaches of tidal waters. The program boundaries encompass all or portions of 19 coastal counties including Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Liberty, Jefferson, and Orange counties and overall include roughly 8.9 million acres of land and water.

Within this coastal zone boundary, the scope of the TCMP's regulatory program is focused on the direct management of fourteen generic "Areas of Particular Concern," called coastal natural resource areas (CNRAs). These CNRAs are associated with valuable coastal resources or vulnerable or unique coastal areas and include: waters of the open Gulf of Mexico; waters under tidal influence; submerged lands; coastal wetlands; seagrasses; tidal sand and mud flats; oyster reefs; hard substrate reefs; coastal barriers; coastal shore areas; Gulf beaches; critical dune areas; special hazard areas; critical erosion areas; coastal historic areas; and coastal preserves. Specifically, the geographic scope of the regulatory programs is based on the direct regulatory jurisdiction of those "networked" state agency and local government authorities which are subject to the program as provided by the Coastal Coordination Act. It should be noted that the geographic scope extends upstream 200 miles from the mouths of rivers draining into coastal bays and estuaries in order to manage water appropriations on those rivers. In addition, the State has designated the Western Outer Continental Shelf (OCS) planning area as the geographical area in which Federal consistency shall apply outside of the coastal boundary. The TCMP also identifies those Federal lands which are excluded from the State's coastal zone.

Land and water uses subject to the program generally include: the siting, construction, and maintenance of electric generating and transmission facilities; oil and gas exploration and production; the siting, construction, and maintenance of residential, commercial, and industrial development on beaches, critical dune areas, shorelines, and within or adjacent to critical areas and other CNRAs. In addition, associated activities such as canal dredging; filling; placement of structures for shoreline access and shoreline protection; on-site sewage disposal, stormwater control, and waste management for local governments and municipalities; the siting, construction, and maintenance of public buildings and public works such as dams, reservoirs, flood control projects and associated activities; the siting, construction, and maintenance of roads, highways, bridges, causeways, airports, railroads, and non-energy transmission lines and associated activities; certain agricultural and silvicultural activities; water impoundments and diversions; the siting, construction, and maintenance of marinas, state-owned fishing cabins, artificial reefs, public recreational facilities, structures for shoreline access and shoreline protection, and boat ramps.

The uses and activities subject to the TCMP are, more specifically, those uses and activities managed by "networked" state agency and local government authorities, identified in the Council rules at 31 TAC §505.12 and listed in Part II Chapter Four. Land and water uses exempted from the program include those land and water uses exempted by statute or rule in the networked authorities and identified in Part II Chapter Four.

2. Program Goals and Policies

The policy framework is built around a uniform set of coastal goals and policies adopted by the Council at 31 TAC §501. The goals of the TCMP are:

1. to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs;
2. to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone;
3. to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs;
4. to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone;
5. to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone;
6. to coordinate agency and local government decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs;
7. to make agency and local government decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and Federal regulatory and other programs for the management of CNRAs;
8. to make agency and local government decision-making affecting CNRAs more effective by employing the most comprehensive, accurate, and reliable information and scientific data available and by developing, distributing for public comment, and maintaining a coordinated, publicly accessible geographic information system of maps of the coastal zone and CNRAs at the earliest possible date;
9. to make coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the TCMP; and
10. to educate the public about the principal coastal problems of state concern and technology available for the protection and improved management of CNRAs.

The coastal policies (which are described in Part II Chapter Four, and Appendix C) are primarily performance standards intended to avoid, minimize, and/or compensate for adverse impacts to the CNRAs. The policies address the protection of coastal resources including beaches and dune systems, submerged lands, wetlands, seagrass beds, tidal flats, oyster beds and other

habitats as well as protection of coastal bays and estuaries (e.g., water quality and freshwater inflows). The policies also provide for maintenance and enhancement of public access to Gulf beaches, and the management of coastal development on beaches and in dunes and coastal hazard areas. The policies also provide for the management of specific land and water uses including electric generating facilities; oil and gas exploration and production; hazardous and solid waste facilities; large scale developments; construction of waterfront facilities such as marinas, wharves, and bulkheads; dredging and filling, and dredged material disposal; transportation projects; and levees and flood control projects. While the coastal policies as adopted by the Council reflect mostly existing policies, they also include enhancements to core policies related to managing "critical areas" (e.g., coastal wetlands, seagrasses and tidal sand and mud flats), dredging and dredged material disposal, submerged lands, beaches and dunes, and erosion areas.

3. Program Organization and Implementation

The TCMP is a networked program that will be implemented primarily through eight state agencies, 18 local governments, and the Council. The program will rely primarily on direct state control of land and water uses, although local governments will implement state guidelines related to beach and dune management. Implementation and enforcement of the coastal policies is primarily the responsibility of the networked agencies and local governments through their existing statutes, regulatory programs or other authorizations. Networked agencies include: the General Land Office/School Land Board, Texas Natural Resource Conservation Commission, Railroad Commission, Texas Parks and Wildlife Department, Texas Transportation Commission, Texas Historical Commission, the Public Utility Commission, the Texas State Soil and Water Conservation Board, and the Texas Water Development Board. Similarly, 18 county and municipal governments, in those counties with barrier islands, are also networked entities with responsibilities for program implementation vis-a-vis beaches and dunes.

The Coastal Coordination Act mandates that these networked agencies and local governments undertake specified actions, authorizations, and rulemaking in compliance with the TCMP policies as well as enforce relevant provisions of the TCMP through their regulatory processes. The Coastal Coordination Act also requires each networked agency or local government to issue a formal consistency determination that the project or authorization is consistent with the State's coastal policies when proposing an action subject to the TCMP. This decision can be contested by third parties, state agencies, or Council member agencies either administratively or judicially and, if necessary, forms the basis for Council reviews of these actions for consistency. A brief summary of the networked agencies and authorities is provided below.

Protection of Critical Areas

The School Land Board/General Land Office (SLB/GLO), Texas Natural Resource Conservation Commission (TNRCC), Railroad Commission (RRC), and Texas Parks and Wildlife Department (TPWD) will all implement various coastal policies to manage development in and to protect critical wetlands and other aquatic habitats pursuant to their authorities related to water quality standards and Section 401 certifications, submerged lands approvals, and permits for dredging and mining.

Barrier Islands: Shoreline Access, Dune Protection, and Hazard Mitigation

City and county governments in those counties with barrier islands will implement the TCMP policies related to preservation of beach access and dune protection through development of Beach Access and Dune Protection Plans consistent with the TCMP policies per the Open Beaches Act and Dune Protection Act (TEX. NAT. RES. CODE ANN. Chapters 61 and 63), as amended by SB 1053 (1991) and floodplain requirements (TEX. NAT. RES. CODE ANN.

Chapter 33). These plans must address development adjacent to public beaches and within critical dune areas and must address maintenance or enhancement of public access to beaches, impacts to dunes, construction practices to minimize damage from flooding and storm surge, and use and placement of erosion control structures. Once the plans are certified by the SLB/GLO and the Office of the Attorney General (OAG) to be consistent with these requirements, local governments may issue beachfront construction certificates and dune protection permits to implement the policy. The SLB/GLO and OAG review and comment on these certificates and permits and the OAG, GLO or local district attorney may initiate legal action if local permits are inconsistent with TCMP policy. In addition, the TNRCC and Texas Department of Transportation (TxDOT) will implement policies related to managing undeveloped areas of barrier islands through approval of special districts and transportation projects on barrier islands (TEX. WATER CODE ANN. Chapter 50 and TEX. REV. CIV. STAT. ANN. art. 6663).

Protection of Estuaries and Coastal Water Quality

The SLB/GLO, TNRCC, RRC, and TPWD will implement the TCMP policies related to dredging, dredged material disposal and beneficial uses of dredged material through submerged lands authorities (TEX. NAT. RES. CODE ANN. Chapter 33); water quality standards and Section 401 certification authority (TEX. WATER CODE ANN. Chapter 26); and TPWD dredging and mining permits (PARKS & WILDLIFE CODE ANN. Chapter 86). The SLB/GLO will implement policies related to construction of structures and marinas on state-owned submerged lands through submerged lands authorities. The TNRCC and RRC will implement policies to manage wastewater discharges through State Water Pollution Control authority (TEX. WATER CODE ANN. Chapter 26 and TEX. NAT. RES. CODE ANN. Chapter 91). The TNRCC will implement policies to manage the impacts of water appropriations through permits for water diversions (TEX. WATER CODE ANN. Chapter 11). The TNRCC will manage impacts from on-site sewage systems and underground storage tanks through on-site disposal system authorities (TEX. WATER CODE ANN. Chapter 26 and TEX. HEALTH & SAFETY CODE Chapter 166). The Texas State Soil and Water Conservation Board (TSSWCB) will implement policies to manage nonpoint-source impacts from agricultural and silvicultural activities (TAC Chapter 201 and TEX. WATER CODE ANN. Chapter 26)

Coastal Erosion

The local governments in concert with the GLO will implement the TCMP policies to manage impacts of erosion on Gulf beaches and coastal development, as well as impacts of coastal development which can cause coastal erosion, through the beach access and dune protection authorities (TEX. NAT. RES. CODE ANN. Chapters 61 and 63) and submerged lands authorities. Regarding bay shores, the SLB/GLO will implement coastal policies through the issuance of leases and easements for erosion control structures on state-owned submerged lands. Anticipated management activities include the development of a coastwide policy for managing coastal erosion that will identify Texas Gulf beaches that are eroding and rank them from most to least critical, and the implementation of a comprehensive long-term management plan for the restoration of Texas' critically eroding beaches pursuant to Senate Bill 1053. This coastwide erosion response plan will be submitted to the legislature with recommended actions. The coastwide erosion response plan will be the basis for prioritization of shore protection and restoration projects.

Historic/Cultural Resources

The Texas Historical Commission will implement the TCMP policies related to conserving coastal historic resources through permits and other management activities pursuant to the Antiquities Act (TEX. NAT. RES. CODE ANN. Chapter 91)

Major Development

The Public Utility Commission will implement the TCMP policies to manage development of power plants and transmission lines through certificates of convenience and necessity (TEX. REV. CIV. STAT. ANN. art. 1446c). TxDOT will implement policies to manage the impacts of transportation projects through its approvals of these projects (TEX. REV. CIV. STAT. ANN. art. 6663, and art. 6674). TNRCC will implement policies related to managing impacts from levees and flood control projects through its approvals of these projects (TEX. WATER CODE ANN. Chapter 16).

Coastal Coordination Council

The Coastal Coordination Act established the Coastal Coordination Council, which consists of the heads of the State's resource agencies and four gubernatorial appointees representing local governments, agriculture, coastal business, and coastal citizens. The Council is responsible for: (1) policy development and policy coordination through promulgation of the uniform coastal policies; (2) program oversight and dispute resolution through the state consistency review procedures and agency rule certification and decertification; and (3) implementation of Federal consistency authority through reviews of Federal activities. While the networked state agencies and local governments are required by the Coastal Coordination Act to undertake actions in compliance with the coastal policies, the Coastal Coordination Act provides for oversight by the Council and a number of mechanisms to ensure that networked agencies and local governments comply with the coastal policies.

The Coastal Coordination Act and Council rules at 31 TAC §505 authorize and establish a process for the Council, in conjunction with the OAG, to review networked state agency and local government proposed actions and, if necessary, take legal action to ensure compliance with TCMP policy (see discussion in Part II Chapter Five). In order for an agency or local government action to be reviewed, the proposed action must be referred to the Council by a person, state agency or Council member and accepted for review by three or more Council members. If the Council accepts referral of an agency or local government action, and two-thirds of the Council members find the action to be inconsistent, the Council will issue findings and recommendations to the agency or local government proposing the action. If the agency does not comply with those recommendations the Council can request an OAG opinion and if the OAG concurs, a suit can be filed in court to ensure that the agency's action is consistent.

In practice, it is anticipated that the Council's oversight role will be limited to the review of major actions and cases requiring dispute resolution. The TCMP includes incentives (rule certification and thresholds for referral) for agencies to ensure that their operating rules are consistent with the coastal policies. While not mandated by the Coastal Coordination Act, nor required in order to implement the coastal policies, the rule certification procedures provide for a voluntary process whereby agencies can submit their existing rules, new rules, or rule amendments to the Council for review. If an agency's rules are found to "incorporate or otherwise require compliance with the coastal policies" then the Council will certify those agency rules as consistent. Upon a determination that the agency's rules are consistent--which may require rulemaking on the part of the networked agencies and local governments--the agency's rules would be incorporated as part of the TCMP's coastal policies and the agency can establish thresholds for referral to limit Council review of its proposed actions. The ability to limit the Council's review to major actions, therefore, should provide the incentive for an agency to submit its rules for certification. The networked agencies and local governments have developed agreements with the Council committing them to submit their existing and future rules to the

Council for certification.

In addition, the Council has other means to ensure that agency actions are in compliance with the TCMP. The TCMP includes provisions and mechanisms for the Council to monitor state agency and local government implementation and enforcement of the program. The Council will review quarterly and annual reports developed by the networked agencies that detail the implementation of the coastal program and future agency rulemaking. If the Council finds that an agency has not complied with the coastal policies in implementing its authorities or has amended or developed new rules that are not consistent with the coastal policies, then the Council can issue a "Notice of Program Deficiency" with recommendations for remedying those deficiencies. If the networked agency fails to remedy the problems in a reasonable time the Council can revoke the agency's rule certification, which would void any thresholds for referral limiting the Council's ability to review that agency's proposed actions.

The Coastal Coordination Act also provides for a voluntary provision to allow agencies to ensure that agency or local government plans which will guide agency decision-making, are consistent with the coastal policies. The Council may provide, if requested by a state agency or local government, a non-binding advisory opinion on the proposed plans. Council participation in the planning process should help identify consistency issues well before actions are proposed and thereby could improve compliance with coastal policies.

Also, the Council will be the State entity responsible for Federal consistency reviews pursuant to Section 307 of the Coastal Zone Management Act (CZMA). The Council has developed Federal consistency procedures (31 TAC §506) and will conduct reviews of Federal agency activities to ensure that they are consistent with the Federally approved enforceable policies of the TCMP. The GLO and the Executive Committee of the Council will assist the Council with reviews by preparing initial staff recommendations to Council members. The TCMP also provides for the use of "Interagency Coordination Groups" (see below) to assist the Council in its reviews of Federal development projects.

Permitting Assistance Group/Preliminary Reviews

The Coastal Coordination Act provides new mechanisms to improve compliance with policies as well as streamline the permitting process--the preliminary consistency review process and the Permitting Assistance Group (PAG). Preliminary reviews will be used to identify potential consistency issues early on, and indicate what changes are necessary for the applicant to make to comply with the coastal policies before the applicant is too invested in a particular course of action. The PAG, which consists of staff level members from the principal networked agencies, will conduct the preliminary reviews. The PAG will also provide technical assistance to the applicant not only to improve compliance with the coastal policies, but to assist applicants move through the permitting/approval process as quickly as possible. Where there is adequate information and public comment, the Executive Committee (see below) with assistance from the PAG, can make preliminary consistency findings, which will preclude the need for the full Council to review that action unless there are significant changes to the action.

Advisory Committee

Texas will use an additional mechanism to ensure continued public and governmental participation in the TCMP and to assist with public outreach and education. The Council will establish a citizens advisory committee to provide enhanced opportunities for public input into program implementation. The Advisory Committee, expected to be established in October 1996, will be responsible for identifying significant or emerging issues; hosting local meetings or workshops, and disseminating information on the program to the general public. The Council is

considering establishing regional subcommittees as part of the Advisory Committee structure, but no decision has been made as of this date.

Executive Committee of the Council

The Executive Committee, which consists of senior management level representatives of the Council members, will be responsible for implementing Council directives, providing recommendations for most issues addressed by the Council, issuing preliminary consistency findings; and assisting in policy development.

Interagency Coordination Groups

The Coastal Coordination Act also provides for the establishment of Interagency Coordination Groups (ICGs) to assist Federal agencies in developing projects that are consistent with the Federally approved TCMP policies and assist the Council in carrying out Federal consistency reviews for those activities. ICGs are composed of representatives of Federal and state resource agencies (at least three Council member agency representatives), and local sponsors of the particular project. The ICGs will work with the Federal agency to develop a project that will be consistent with the coastal policies. If the Federal agency then submits a consistency determination that follows the ICG's recommendations (and which a majority of the Council member representatives on the ICG have determined to be consistent) then the Council will automatically concur with the Federal agency's consistency determination.

Lead Coastal Agency: Texas General Land Office

The Governor designated the GLO to be the lead coastal agency for the purposes of receiving and administering Federal CZMA funds. The GLO will also be responsible for monitoring the implementation of the coastal policies by the agencies and local governments. The GLO also serves as staff for the Council, implements the state lands authorities, co-administers the beach dune regulations with the OAG, and will play an important role in public education and outreach.

4. Other Special Planning Requirements of the CZMA

The CZMA requires that states specifically address the issue of shoreline erosion, shorefront access, and consideration of the national interest in facility siting, designating special management areas for preservation and restoration, public participation, and plan coordination as part of program development. The TCMP responses to these requirements are found in Part II Chapters Six, Seven, and Eight.

B. Changes The Program Will Make

The TCMP will better manage coastal development to enhance and protect natural resources. There are four principal areas in which the TCMP enhances Texas' management of its natural resources and improves government processes: (1) government accountability, responsiveness, and coordination; (2) dredging in bays and estuaries; (3) development on beach and dune systems and coastal hazard areas along Gulf shorelines; and (4) development in coastal wetlands and other aquatic sites.

1. Government Accountability, Responsiveness, and Coordination

Texas' fragmented government structure frustrates the development of comprehensive coastal policy and management mechanisms. For example, response to shoreline erosion has been

hampered by the lack of a clear state policy and confusion over state, Federal, and local roles and responsibilities. The lack of a meaningful coordination mechanism to move agencies to address this critical coastal issue sparked public support for a coastal management program and resulted in the Texas Legislature creating the Council.

For the first time, the Council provides a single public forum in which the public and permit applicants can address all the policy makers at one time and the agency heads can communicate and work together on policy issues. This increased accountability will increase both the efficiency and effectiveness of Texas' response to priority coastal issues such as shoreline erosion and loss of coastal wetlands and other critical areas.

The TCMP will foster improved accountability, responsiveness, and coordination among numerous Federal, state, and local governmental agencies with jurisdiction in the coastal area through the Council's promulgation of uniform coastal policies. The establishment of the Council and the state consistency review procedures for both issuance of permits and rulemaking actions provide a forum for effective resolution of disputes over the interpretation of coastal policy. Compliance with coastal policy will be enhanced as a result of the requirement of the GLO and Council to monitor all state agency and local government implementation with annual reports to the Council and legislature.

In addition, the TCMP will simultaneously foster permit simplification and improved compliance with the State's coastal policies. Permit applicants will receive technical assistance from the PAG and preliminary consistency findings issued by the Executive Committee of the Council. These and other provisions-- such as coordinated review of multi-permit projects and joint consideration of cumulative and secondary impacts from major actions--will facilitate identification of problems with proposed coastal projects. The TCMP will help ensure projects are designed to meet all applicable requirements and that potentially costly and time-consuming interagency disputes are resolved quickly. The TCMP will also provide for joint public notice for state and Federal wetlands permitting requirements.

2. Dredging in Coastal Waters

The TCMP includes a process for creating a long-term plan for dredging and the disposal or placement of dredged material. More than 770 miles of commercially navigable waterways have been dredged through Texas' coastal waters. Ongoing maintenance of these waterways results in approximately 30 to 40 million cubic yards of material being dredged annually. Extensive dredging is also conducted by state, local, and private concerns done within the coastal zone. Records from the Corps' Galveston District regulatory program indicate that 90 navigation related permits were issued in 1995.

The TCMP policy recognizes the importance of dredging to ports and commerce and reflects the State's conclusion that dredged material is a resource that can be used beneficially to slow shoreline erosion, create coastal wetlands, and serve other beneficial purposes. The TCMP requires beneficial use of dredged material under circumstances outlined in the dredge policy, and discussed in Chapter Four. This policy provides a balance between the competing national and state interests in ports and navigation and protection and restoration of important coastal resources. The TCMP will also require mitigation of the impacts from dredging and dredged material disposal practices. In particular, the TCMP establishes a preferred sequence of dredged material disposal, maximizing beneficial use, upland and contained disposal, while minimizing open bay disposal, thus ensuring that navigation concerns are satisfied in a manner sensitive to the coast and other coastal resource users.

The TCMP incorporates an innovative technique that uses the State's Federal consistency

review authority as a long range planning tool. Over the first three to five years of Federal approval of the TCMP, the Council and the Corps of Engineers will review all coastal waterways to determine whether current commercial dredging and dredged material disposal and placement practices can be improved. Where changes to current practices would incur additional costs, time is allowed to obtain the necessary funds before the changes are implemented. This will result in greater beneficial use of the dredged material and improved disposal and placement practices.

3. Development on the Gulf of Mexico Shoreline

Public support for a coastal management program resulted in the Texas Legislature enacting amendments to the Open Beaches Act, Dune Protection Act, and statutes authorizing coastal cities and counties to adopt floodplain development ordinances. These amendments gave the GLO and local governments the authority to manage development in the beach/dune system and coastal hazard areas along the Gulf shoreline. In 1993, the GLO adopted rules under which local governments developed local plans for permitting development in these areas. The rules require that development be planned so that public access to beaches is preserved and improved, destruction of dunes is avoided, and erosion, storm, and flood hazards are minimized. All 18 local governments have received GLO approval for their plans and are actively managing that development. This program will improve local government capacity to manage coastal development to better protect dunes and public beaches.

While direct permitting authority resides at the local level, the State maintains active policy authority and oversight over the beach and dune program. The GLO retains authority to establish minimum dune protection and beach access standards. The OAG and GLO receive and review all local permits. Finally, the GLO and OAG may take direct enforcement action for violations of the beach/dune rules.

4. Development of Coastal Wetlands and Other Critical Areas

Development of the TCMP resulted in three state agencies adopting new rules for management of coastal wetlands, seagrasses, tidal sand and mud flats, oyster reefs, and hard substrate reefs. Collectively, these are known as "critical areas." The TNRCC, RRC, and SLB adopted rules governing their respective authorities over development in critical areas. Before the TCMP, these agencies issued authorizations using a variety of different written and unwritten policies. Each agency's rules now require application of a mitigation sequence (avoid, minimize, and mitigate) currently used by the U.S. Environmental Protection Agency and the Corps of Engineers (Corps). The policy also establishes a uniform state compensatory mitigation policy for unavoidable impacts. Finally, the policy prohibits activities if they would result in significant degradation to critical areas.

As a result, the five agencies responsible for managing coastal wetlands in Texas' coastal zone will now operate under clearer, more comprehensive, and uniform standards. This will make critical area management in the coastal zone both more effective in terms of critical areas protection and more efficient in terms of intergovernmental coordination, predictability, and responsiveness.

5. Program Objectives and Action Items

Texas intends to use Section 306, 306A and other Federal CZMA funds to further advance the program goals and address the priority issues identified above. The Council has established seven broad priorities that will be used to allocate CZMA funding. These priority areas include:

1. Coastal Natural Hazards Response - TCMP monies can help enhance local government capacity to respond to coastal natural hazards such as erosion and flooding by funding local planning and management efforts.
 2. Critical Areas Enhancement - Wetlands, seagrasses, oyster reefs, and tidal sand and mud flats are widely recognized as being of great value. Unfortunately, because these coastal natural resources are susceptible to many threats, they are still being lost and degraded. TCMP funds can be used to help state and local governments manage critical areas within their jurisdictions.
 3. Shoreline Access - Texas has one of the strongest sets of laws in the Nation protecting public access to the beach. However, increased shoreline development makes meeting the shoreline access needs of the public a challenge. TCMP funds can be used to plan for and acquire access corridors and enhance existing access sites (e.g., off-beach parking, public bathrooms).
 4. Waterfront Revitalization and Ecotourism Development - CZMA funds can be used to revitalize urban waterfronts to provide enhanced recreational opportunities and boost local economies and to develop local plans for ecotourism.
 5. Permit Streamlining/Assistance and Governmental Coordination -A common complaint of coastal citizens and business persons is that the various levels of government do not act in concert. Such fragmentation and incoordination result in time delays and last-minute changes in projects that cost businesses and individuals money. TCMP funds can be used to streamline permitting processes and to provide technological and technical assistance.
 6. Information and Data Availability - Government efforts at improving resource management are often hampered by lack of basic information. TCMP funds can be used to develop the baseline data and maps necessary for sound implementation of the TCMP goals and policies.
 7. Public Education and Outreach - Conveying the meaning of laws and regulations to the regulated public in an appropriate format rarely receives high priority. TCMP funds can be used to develop and distribute public education materials such as user's manuals and to host public meetings, workshops, and conferences where technical information can be exchanged and training can be obtained.
6. Effects of Federal Approval

The principal anticipated effects of Federal program approval are fourfold. First, Federal CZMA funds (anticipated to be roughly 2.2 million dollars annually) will be available to Texas to assist in program implementation activities by the state and local entities. The funds will be used to address the seven broad priorities established by the Council identified above.

Second, program approval will also activate the Federal consistency provisions of the CZMA, which require that Federal activities, Federally licensed and permitted activities, and Federal assistance to state and local governments be consistent with the Federally approved enforceable policies of the TCMP.

Third, Federal approval will ensure that varied national interests will be considered and weighed when the State is making decisions with regard to the coast.

Finally, Federal approval of the TCMP will ensure that interested parties in the State are eligible to apply for a deepwater port license from the U.S. Coast Guard, pursuant to the Deepwater Port Act of 1974, by meeting one of the critical eligibility requirements of the Deepwater Port Act. A more detailed description of the effects of Federal approval of the TCMP is provided in Part III (B), Alternatives to the Proposed Action, and Part III (D), Environmental Consequences.

C. The Federal Coastal Zone Management Act

In response to intense pressure on coastal resources, and because of the importance of coastal areas of the United States, Congress passed the Coastal Zone Management Act of 1972, as amended [CZMA] (16 U.S.C. 1451 et. seq.). The Act authorizes a Federal program to encourage coastal states and territories to develop comprehensive coastal management programs. The program is administered by the Secretary of Commerce, who in turn has delegated this responsibility to the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management (NOAA). Currently, 29 states have coastal programs approved by NOAA.

The CZMA affirms the national interest in the effective protection and careful development of the coastal zone by providing assistance and encouragement to coastal states to voluntarily develop and implement management programs for their coastal areas. The CZMA authorizes financial assistance grants under Section 305 for program development and Section 306 for program implementation to provide coastal states and territories with the means for achieving these objectives. Section 305 of the CZMA, allowing for Federal financial assistance to states to develop state coastal management programs, was re-authorized by Congress in the 1990 amendments to the CZMA (PL 101-508, November 5, 1990). NOAA awarded Texas a CZMA Section 305 grant of \$200,000 on July 1, 1992, to complete development of the TCMP, with subsequent grants of \$200,000 in 1993 and \$110,000 in 1995.

Sections 305, 306, and 307 of the CZMA and implementing regulations published on March 28, 1979 (44 CFR Part 18595) as codified at 15 CFR Part 923, provide the requirements and procedures for state program development and Federal approval. In summary, the requirements for program approval are that a state develop a management program that among other things:

1. Identifies and evaluates those coastal resources recognized in the CZMA that require management or protection by the state or territorial government;
2. Re-examines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;
3. Determines specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns. Uses and areas subject to management should be based on resource capability and suitability analyses and socio-economic considerations;
4. Identifies the inland and seaward areas subject to the management program;
5. Provides for consideration of the national interest in planning for and siting of facilities; and

6. Includes sufficient legal authorities and organizational structure to implement the program and to ensure conformance to it.

In arriving at these substantive aspects of the program, states are obligated to follow an open process which involves providing information to and considering the interests of the general public, interest groups, local governments, and regional, state, interstate, and Federal agencies.

Section 303 of the CZMA provides guidance on specific national objectives that warrant full consideration during the implementation of approved state coastal management programs.

Section 305 of the CZMA as amended by PL 101-508 in 1990 and subsequent appropriations language authorizes annual grants to states desiring to develop a coastal management program.

After its management program receives Federal approval, a state is then eligible for annual grants under Section 306 to implement its program. Section 306A of the CZMA also provides that states may use a portion of their Section 306 awards for low cost construction projects that result in the preservation of important natural areas, improved public access, or renewal of urban waterfronts.

Section 307 contains the Federal consistency provisions of the CZMA to ensure that Federal actions are consistent with the state's Federally approved program. Paragraphs (1) and (2) of Section 307(c) require that Federal activities and development projects in or directly affecting the coastal zone be consistent to the maximum extent practicable with a Federally approved state program. Subparagraphs (A) and (B) of Section 307(c) require that Federally licensed and permitted activities affecting the coastal zone also be consistent with a Federally approved state program. Section 307(d) requires Federal assistance to state and local governments for projects affecting the coastal zone to be consistent with a Federally approved state management program. Federal consistency implementing regulations are found at 15 CFR Part 930.

Section 309, as amended by PL 101-508 in 1990, establishes a coastal enhancement grant program. This section provides that a portion of Section 306 funds is available to states to develop program changes which strengthen their programs' ability to address particular coastal issues. State efforts to seek such improvements are meant to focus on priorities based on a self-assessment of the nine objectives listed in Section 309. These objectives include stronger wetland protection, improved management of coastal hazards, and additional public access.

Section 312 directs the Secretary to evaluate the performance of state coastal management programs on a continuing basis. NOAA formally reviews the implementation of each state on a three year cycle.

Section 315 establishes a National Estuarine Research Reserve Program to preserve a representative series of undisturbed estuarine areas for long-term scientific and educational purposes. There are currently no estuarine research reserve sites designated in Texas.

The Coastal Zone Reauthorization Amendments of 1990 (CZARA) established a new Coastal Nonpoint Pollution Control Program (CNPC), in addition to updating the CZMA. The State of Texas has agreed to submit a complete Section 6217 program within 30 months of program approval (See Appendix G). After Texas submits its coastal nonpoint program, NOAA and EPA will make a final determination regarding its compliance with Section 6217.

D. Cross Reference to Program Requirements

(view [Cross Reference](#) as a GIF [50 kb] if your browser does not support tables)

CZMA Section	Requirement	CZMA Approval Regulations	FEIS Section
306(d)(1)	The TCMP contains policies to adequately manage all uses with direct and significant impacts on coastal waters and ensure protection of those resources and areas that make the Texas coast a unique, vulnerable or valuable area.	15 CFR §923.3	Part II Chapter Four
306(d)(1)	The TCMP was developed after notice and with the opportunity for full participation by Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private.	15 CFR 923.3	Part II Chapter Eight
306(d)(2)(A)	The TCMP includes sufficient inland, seaward, and interstate boundaries.	15 CFR §923.31-34	Part II Chapter Two
306(d)(2)(B)	The TCMP identifies the land and water uses subject to the management program.	15 CFR §923.11	Part II Chapter Four
306(d)(2)(C)	The TCMP designates Areas of Particular Concern.	15 CFR §923.21-23	Part II Chapters Four and Six
306(d)(2)(D)	The TCMP identifies the means by which the state will exert control over the defined land and water uses.	15 CFR §923.40-43	Part II Chapters Four and Five and Appendices B, C, D, and E
306(d)(2)(E)	The TCMP contains broad guidelines on priorities of uses in particular areas, including those uses of lowest priority.	15 CFR §923.3 (923.21)	Part II Chapter Four and Appendix C
306(d)(2)(F)	The TCMP includes a description of the organizational structure proposed to implement the TCMP, including the responsibilities and interrelationships of local, area wide, state, regional, and interstate agencies in the management process.	15 CFR §923.46	Part II Chapter Three and Appendix C
306(d)(2)(G)	The TCMP includes a definition of the term beach, and a planning process for the protection of, and provision of access to, public beaches and other public coastal areas.	15 CFR §923.24	Part II Chapter Six
306(d)(2)(H)	The TCMP includes a planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts from such facilities.	15 CFR §923.13	Part II Chapters Six and Seven
306(d)(2)(I)	The TCMP includes a planning process for assessing the effects of, and studying and evaluating ways to manage the impact of, shoreline erosion and for restoring areas adversely affected by such erosion.	15 C.F.R. §923.25	Part II Chapter 6
306(d)(2)(I)	The TCMP includes a planning process for assessing the effects of, and studying and evaluating ways to manage the impact of, shoreline erosion and for restoring areas adversely affected by such erosion.	15 CFR §923.25	Part II Chapter Six
306(d)(3)(A)	The state has coordinated the TCMP with local, area wide, and interstate plans applicable to areas within the coastal zone existing before 1/1/95.	15 CFR §923.56	Part II Chapter Six
306(d)(3)(B)	The state has established an effective mechanism for continuing consultation and coordination between the Council and local governments, interstate agencies, regional agencies, and area wide agencies within the coastal boundary.	15 CFR §923.57	Part II Chapters Three, Six, and Eight
307	The TCMP contains adequate Federal consistency procedures.	15 CFR §923.53 and §930 Subparts C-F	Part II Chapter Five and Appendix C
306(d)(4)	The State has held adequate public hearings during the development of the TCMP.	15 CFR §923.58	Part II Chapter Eight
306(d)(5)	The Governor has reviewed and approved the management program and certifies that it contains adequate authorities.	15 CFR §923.48	Part II Chapter One
306(d)(6)	The Governor has designated a lead coastal agency.	15 CFR §923.47	Part II Chapters One and Three
306(d)(7)	The state is organized to implement the TCMP.	15 CFR §923.46	Part II Chapter Three
306(d)(8)	The TCMP provides for adequate consideration of the national interest.	15 CFR §923.52	Part II Chapter Seven and Appendix H
306(d)(9)	The TCMP includes a program by which specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical, or esthetic values.	15 CFR §923.22	Part II Chapter Six
306(d)(10)(A) and (B)	The state has authority for the management of the coastal zone in accordance with the TCMP, including the power to: a) administer land use and water use	15 CFR §923.41	Part II Chapters Four, Five, and Six

	regulations to control development to ensure compliance with the TCMP; b) resolve conflicts among competing uses; and c) acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means, where necessary.		and Appendices B, C, D, and E
306(d)(10)(B)	The State has the authority to acquire interests in real property when necessary to achieve conformance with the management program.	15 CFR § 923.41	Part II Chapters Four and Six and Appendix D
306(d)(11)	The TCMP uses any one or a combination of the following techniques for control of land uses and water uses within the coastal zone: a) state establishment of criteria and standards for local implementation; b) direct state land and water use planning and regulation; and/or c) state administrative review of development plans, projects, or land and water use regulations.	15 CFR §923.41 - 44	Part II Chapters Three, Four, and Five and Appendices B, C, and D
306(d)(12)	The TCMP ensures that local land use and water use regulations within the coastal boundary do not unreasonably restrict or exclude land uses and water uses of regional benefit.	15 CFR §923.12	Part II Chapter Seven
306(d)(13)	The TCMP provides for an inventory and designation of areas that contain one or more coastal resources of national significance and specific and enforceable standards to protect such resources.	No Regulations	Part II Chapters One, Four, and Seven
306(d)(14)	The TCMP provides for public participation in permitting processes, consistency determinations, and other similar decisions.	No Regulations	Part II Chapters Three, Five, and Eight and Appendices C and D
306(d)(15)	The TCMP ensures that all state agencies will adhere to the program.	No Regulations	Part II Chapters Three, Four, and Five and Appendices B and C
306(d)(16)	The TCMP contains enforceable policies and mechanisms to implement applicable requirements of the §6217 (g).	Guidance on Coastal Nonpoint Source Program issued January 1993.	Part II Chapter Four and Appendix G

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